

MISSOURI DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION
THREE-MEMBER HEARING PANEL (§ 162.961 RSMo 2001)

, a minor student,
By his parents, ,

Petitioners,

Vs.

“Due Process” Hearing Request
Of January 16, 2001

PARKWAY C-2 SCHOOL DISTRICT
And SPECIAL SCHOOL DISTRICT OF
ST. LOUIS COUNTY,

Hearing Date: July 9-10, 2002

Respondents.

DECISION

January 31, 2003

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Panel Chairperson

I. Procedural History

Petitioners filed their request for a “due process” hearing on January 16, 2001. Petitioners claimed their son, who “suffers from autism with severe cognitive delay,” was being denied a free and appropriate public education (“FAPE”). *See Individuals with Disability Education Act* (“IDEA”), 20 U.S.C. § 1400 *et seq.* Petitioners claimed that Respondents should provide residential placement in “a school that primarily educates autistic children and that provides a twenty-four hour a day training program that is as close to one on one contact as it possible.”

Following the empowerment of the hearing panel, Respondents requested and Petitioners consented to an extension of the hearing deadline requirements of 34 CFR § 300.511 and Section 162.961.5 RSMo. Pursuant to this agreement, a Preliminary Scheduling Order was entered on February 20, 2001, extending the deadline to hold a hearing and render a decision to April 2, 2001. Thereafter, the parties informed the Chairperson that they wished to continue their settlement negotiations. Respondents requested an extension of the time lines, and Petitioners consented. Pursuant to this consent, a First Amended Preliminary Scheduling Order was entered on April 2, 2001, extending the hearing date to July 2, 2001 with the decision to be rendered by August 1, 2001. Thereafter, the parties again informed the Chairperson that their negotiations were continuing, and that they were jointly requesting an extension of the timelines. Therefore, on July 1, 2002, a Second Amended Preliminary Scheduling Order was entered, extending the hearing date to September 6, 2001, with the decision to be rendered by October 4, 2001. The parties subsequently made a joint request to continue the hearing and extend the timelines. Accordingly, on September 6, 2001, a Third Amended Preliminary Scheduling Order was entered, extending the hearing date to December 3, 2001, with the decision to be issued by January 14, 2002. The parties were directed to inform the Chairperson of the status of their negotiations and whether they believe the matter ready for hearing as ordered by October 5, 2001. The parties did not notify the Chairperson by October 5, however, they subsequently informed the Chairperson that the child’s status with the Department of Mental Health Regional Center in St. Louis required additional attention, making the December 3, 2001 hearing date difficult. Respondents therefore requested another extension, to which Petitioners consented. Accordingly, on November 21, 2001, a Fourth Amended Preliminary Scheduling Order was entered continuing the hearing to commence on March 1, 2002, with the decision to be rendered by April 1, 2002. Subsequently, the parties jointly requested another extension of the timelines. On February 15, 2002, a Fifth Amended Preliminary Scheduling Order was entered, continuing the hearing to commence on May 31, 2002, with the decision to be rendered by July 1, 2002. Subsequently, the parties again jointly requested another extension of the timelines. On May 13, 2002, a Sixth Amended Scheduling Order was entered, continuing the hearing to commence on July 9, 2002, with the decision to be rendered by September 6, 2002.

Hearing commenced on July 9, 2002, in the boardroom of Respondent Special School District’s central administrative offices. The hearing continued through Wednesday, July 10, 2002. By agreement of the parties at the conclusion of the hearing, the parties were granted until August 19, 2002 to file proposed findings of fact and conclusions of law, with the panel’s decision to be rendered by September 23, 2002.

Neither party filed their proposed findings and conclusions by August 19, 2002. Each subsequently informed the Chairperson that they were jointly requesting an extension to file these by September 6, 2002. The parties did not suggest a proposed date for the decision to be rendered, despite request from the Chairperson. Accordingly, the Chairperson ordered that the parties' joint request for an extension to file their proposals would be treated as a joint request to file their proposals out of time, and would be ruled on no later than September 6, 2002 after each of the parties had submitted their proposals. The parties were again directed to submit suggested deadline dates for the decision when they submitted their proposals. The Chairperson received proposals from each party on September 5, 2002. However, the parties did not suggest a deadline date for the decision to be rendered. Thereafter, the panel, desiring to address all proposed findings from each party, and despite the absence of a requested deadline date for the decision, on September 6, 2002, entered an order sustaining the parties' joint request for leave to file their proposed findings of fact and conclusions of law out of time. Due to the length and complexity of the parties' proposed findings and conclusions, and the panel's desire to review them together at a conference if required, the deadline to render a decision was extended to January 31, 2003. The parties were again afforded an opportunity to request a different deadline date for the decision to be rendered or to object to the revised schedule, but neither did so.

II. Issue

At the commencement of the hearing, Petitioners reaffirmed the sole issue in this cause: whether FAPE for the child required full-time residential care. Petitioners claimed that the child has made no academic progress. Petitioners claimed the child has violent, unpredictable outbursts, and is a danger to himself and others. Petitioners claimed these have worsened as the child has grown bigger and stronger. Petitioners claimed the violent conditions stem from the child's disability, warranting full-time residential care at Respondents' cost. [Tr. 10-13]

Respondents countered that the child is in an appropriate least restrictive environment ("LRE"), and is being properly educated at Litzinger School. Respondents agreed that the child is autistic and is "very significantly cognitively impaired." Respondents claimed that the behaviors exhibited by the child are typical behaviors of other students with autism, and that it is thus not necessary for him to be placed in a residential setting. Respondents also claimed that the child is receiving educational benefit from Litzinger. [Tr. 13-15]

III. Findings of Fact

At the commencement of the hearing, the parties agreed to the admission into evidence of numerous documents, denominated as Respondents' Exhibits Numbers 1 through 41. [R-1-41]

The panel received into evidence and gave appropriate weight to the following witnesses:

Petitioners' Witnesses: Petitioners¹; Penelope Fleming; and Joseph Gaehle.

Respondent's Witnesses: Laura Green; Michelle Quinlavin; Lynn Shoudel; Janet Thompson.

After careful consideration of all the evidence, consisting of comprehensive educational records and related documents, and witnesses, as well as review of the proposed findings submitted by each party, the panel hereby finds the following facts:

1. The child was born.
2. The child is currently enrolled at Litzinger School, under an Individualized Educational Plan ("IEP") implemented by Respondent Special School District of St. Louis County ("SSD").
3. The child has been diagnosed with infantile autism. It is not disputed that he is a child with a disability, eligible for special education and related services.
4. The child has been and remains non-verbal.
5. The child started school in an Early Childhood Special Education ("ECSE") program at the Midway School in Madison County, Illinois. [R-1]
6. Respondent SSD began providing services for the child in 1997. On April 14, 1997, Respondent recommended the child be placed in a self-contained "Phase II" autistic classroom. Petitioners consented to this placement. The child received these services at Wren Hollow Elementary School in the Parkway School District. [R-7]
7. An IEP was prepared by Respondent SSD on May 30, 1997. This IEP stated that the child was beginning to use basic signs to communicate. The document indicated that with visual clues, the child could sign the words: *finish*, *stop*, *yes*, *help*, *eat*, and *more*. The IEP also stated that the child was able to follow simple prepositional directions and had been able to anticipate directives from staff after hearing only a few words of the directive. The IEP also stated that the child had shown improvement in removing and replacing clothing with a minimal amount of cueing. The document also indicated that the child was able to answer basic "where" questions by pointing. [R-11 at p.70]
8. The May 1997 IEP indicated that toilet training was an area of concern, as the child was in diapers and pull-ups. [R-11 at p.70]
9. On May 28, 1997, Petitioners agreed to enroll the child in Respondent's Extended School Year program. [R-10]
10. While attending the extended school year program during June and July of 1997, the child was observed waving "Hi" and was able to use a hand sign for "yes" when prompted to do so. [R-10 at p.66]
11. An updated IEP was completed on February 24, 1998. [R-13]

¹ MDESE requests that personally identifiable information concerning the student and Petitioners be set forth only on the cover page of the panel's decision. Both the student's parents, as Petitioners, testified in the hearing.

12. The February 1998 IEP stated that with model or verbal cues, the child was able to sign: *finish, stop, yes, help, eat, more, and I want*. The IEP also noted the following areas of concerns: behavioral; social; using appropriate voice; and relating to others. The IEP also stated that the child's academic skills and daily living skills such as toileting, dressing and eating were below the child's age expectancy. [R-13 at p.79]
13. Petitioners consented to an evaluation on February 9, 1999. [R-15 at p.88]
14. Following the reevaluation, at a diagnostic conference with the parents on March 2, 1999, it was agreed that the child's diagnosis of Autism continued to be appropriate. [R-18]
15. The March 1999 reevaluation indicated that with a model or verbal cue, the child could make signs for the words: *yes, help, eat, I want, and soda pop*. [R-18 at p.111]
16. The March 1999 reevaluation indicated the following areas of concern: behavioral; social, communication skills; and keeping hands and mouth to himself. The child's academic skills were well below his age expectancy. He continued to need assistance with daily living skills and with his personal safety. [R-18 at p.111]
17. March 1999 reevaluation contained an interpretation of the Vineland Adaptive Behavior Scale that indicated the child has an adaptive behavior in the low range; and that his age equivalent ranged from eight months to two-years and ten-months. [R-18 at p.115]
18. The March 1999 reevaluation stated that the child demonstrated inappropriate behaviors including mouthing and chewing objects; grabbing; hair pulling; biting and kicking. The report stated that the child was also unaware of environmental dangers and required close supervision both while in school and in the community. [R-18 at p.115]
19. The March 1999 reevaluation noted that Respondent SSD was unable to conduct the Leiter International Performance Scale evaluation of the child. His Slosson Intelligence Test result was 23 months. [R-18 at p.120]
20. On November 14, 2000, another IEP was developed for the child. [R-24]
21. The November 2000 IEP recommended that the child be placed in a self-contained classroom in a special education school. [R-14 at p.181]
22. The November 2000 IEP indicated that the child was becoming aggressive through pinching, grabbing, kicking, falling to the floor, and hitting. He was not toilet trained. [R-24 at p.184]
23. The November 2000 IEP noted that four professionals believed the child's aggression was a manifestation of his desire for adult attention. The child's aggression toward peers was rare. The IEP noted that the child participates in "school gross motor activities." [R-24 at p.184]
24. Another IEP was developed on February 23, 2001. [R-29]

25. The February 2001 IEP indicated that the child did not interact often without cues, and often initiated interaction through the use of aggression, such as pinching, scratching, pulling hair, biting, kicking, grabbing at the face and chest of an adult that he wants to attend to him. [R-29 at p.234]
26. The February 2001 IEP indicated that during lunch, aggression included biting, hitting, scratching and kicking adults working with him. The IEP also noted that the child has hit and kicked his general education peers. [R-29, at p.234]
27. The February 2001 IEP confirmed that Applied Behavioral Analysis therapy had been employed with the child for the last two years, but had been ineffective. Additionally, a modified version of the PECS (Pictures Exchange Communication System) was ineffective. Nor was an electronic communication board. [R-29 at p.236]
28. The February 2001 IEP indicated the following areas of concern for the child: behavioral; social; communication skills; and keeping hands and mouth to himself. The child continued to need assistance with daily living skills including toileting, dressing, face washing and personal safety. R-29 at p.236]
29. The February 2001 IEP recommended placement in a separate school. The IEP noted: "Separate school can expand upon the concrete, environment & functional themes that seem to best help [the child] grow and in order to insure safety." [R-29 at p.246]
30. During the 2000-2001 school year, the child was placed in a self-contained autism program at Carmen Trails school. [R-29]
31. Subsequent to Petitioners' due process request in January 2001, the parties consented that the child would be moved from Carmen Trails to Litzinger school for the remainder of the school year. The child was transferred there in the Spring of 2001, shortly before the regular school year ended.
32. The Judevine Center for Autism submitted an assessment report on the child's condition on October 17, 2001. [R-35] This assessment concluded that the child had physical skills of a three-year-old child; self-help skills of a two-year and sixth-month-old child; social and academic skills of a two-year-old; and communication skills of a child who is one-year, two-months old. [R-35 at p.305-06]
33. The child's first complete school year at Litzinger was fall 2001 through spring 2002.
34. At the beginning of the 2001-02 school year, the child exhibited heightened aggression toward the classroom authority figure. These behaviors included scratching to the point of drawing blood, kicking, head butting, pulling hair, and biting. [TrII. 10]²
35. The child's teacher, Lynn Shoudel, testified that the aggressive behaviors the child demonstrated were purposeful, usually either to gain attention from adults or to avoid a task. [TrII. 13]

² Transcript, vol. II, p.10

36. Ms. Shoudel used a number of interventions, including the use of time out, hand-over-hand assist, and motivating “reinforcers” to diminish the frequency and intensity of the aggressive behaviors. [TrII. 10-15]
37. Ms. Shoudel provided the child’s parents with detailed explanations of the behavior intervention techniques that she was using. [R-31 at pp.264-66]
38. Ms. Shoudel offered to provide training to the parents, so they could implement the behavior intervention techniques in the home setting. [TrII. 50; R-31 at p.266]
39. On February 2, 2002, Respondent developed another IEP for the child. [R-37]
40. The February 2002 IEP stated that the child’s autism affected his involvement and progress in the general education curriculum that required one-on-one and small group instruction. [R-37 at p.327]
41. The February 2002 IEP stated that the child continued to have weaknesses and significant deficits in expressive and receptive communication; inappropriate attention seeking; pre-academics and self-care. The child continued to use physical aggression to communicate his wants and needs. [R-35 at p.328]
42. On March 20, 2002, Respondent prepared a reevaluation for the child. [R-39]
43. The March 2002 reevaluation indicated that the child had a social age of one year, eight months; an academic age of two years, two months; a communication age of one year, six months; an IQ of 29 and a Slosson Intelligence Test of two years, six months. [R-39 at p.367]
44. Petitioners note the following:
 - a. In three years and one month, the child’s Slosson score increased by a range of seven months;
 - b. In thirteen months the child progressed by six months in the area of self help; two months in academics; and four months in communication skills;
 - c. In thirteen months the child regressed by four months in the area of social skills.
45. Respondent notes the following:
 - a. School psychologist Jan Thompson compared the child’s February 1999 evaluation with the March 2002 reevaluation. The Leiter, a non-verbal test of student intelligence, was attempted during both evaluations. In 1999, the evaluators were “unable to condition [the child] to take that test.” [TrII. 72-76]
 - b. However the evaluators were able to administer the Leiter to the child during the March 2002 reevaluation.
 - c. An IQ of 29 indicates that the child is in the severely mentally handicapped range. [TrII. 87]
 - d. Ms. Thompson testified that when she compared her administration of the child’s Development Profile with a prior administration, although the child demonstrated “markedly depressed” scores, there was some improvement. [TrII. 90-92]

46. The May 29, 2002 IEP for the child indicated continuing concerns and weaknesses in: expressive and receptive communication; inappropriate attention seeking; and use of physical aggression to communicate wants and needs. [R-40 at p.373]
47. The May 2002 IEP indicated that due to significant deficits in academic, communication and behavioral areas, the child needs specialized services outside of the regular education environment which required placement of him in a setting separate from general education. [R-40 at p.386]
48. The May 2002 IEP noted that based on observations of the child, two functions for his aggressive behavior were attention-seeking and escape from demands. The IEP noted that incidents of scratching by the child had diminished from what they were at the beginning of the school year, and were at most three to five times each day. [R-40 at p.387]
49. The child was not toilet trained as of July 10, 2002.
50. Petitioners request that their child be enrolled in a “twenty-four hour per day program outside of the family residence paid for by Respondent.”
51. Respondent notes that other than their general request, there was no testimony or other evidence regarding the desired residential placement.
52. Respondent maintains that the Petitioners’ reasons for justifying a residential placement were not related to the child’s performance in school.
53. Respondent notes that the child’s mother testified that during the child’s first complete year at Litzinger, she agreed with the teachers’ assessments that the child’s behaviors improved, becoming less frequent and less intense. [Tr. 63]
54. Respondent notes that the child goes to school willingly and that his attendance is good. [Tr. 50]

IV. Conclusions of Law, Decision and Rationale

1. The student is a child with a “disability” as that term is defined in the *Individuals with Disabilities Education Act* (“IDEA”), 20 U.S.C. § 1400 *et. seq.* 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.7(a), 300.7(c)(1)(i).
2. The student is entitled to a “free and appropriate public education.” 20 U.S.C. § 1412.
3. “The term free appropriate public education means special education and related services that: (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.” 20 U.S.C. § 1401(8)
4. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 102 S.Ct. 3034 (1982), the Supreme Court first construed what is now known as the IDEA. In language that has become an oft-cited standard in special education cases, the court explained that a special educator’s duty is to provide an educational program reasonably calculated to enable a child to receive educational benefits. *Id.* at

3049. **Rowley** held that IDEA's goal is "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside." *Id.* At 3043.

5. A special education provider must, however, provide more than a "trivial or de minimis educational benefit." **Polk v. Central Susquehanna Intermediate Unit 16**, 853 F.2d 171, 180-85 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030. Numerous cases have discussed the *Rowley* requirement and the proper "standard" by which to adjudge special education providers. In **Doe v. Board of Education of Tullahoma City Schools**, 9 F.3d 455, 459-60 (6th Cir. 1993), the court explained: "The Act requires that the ... schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. ... [W]e hold that the Board is not required to provide a Cadillac."
6. However, in **Lagares v. Camdenton R-III School District**, 68 S.W.3d 518 (Mo.App.W.D. 2002), the Missouri Court of Appeals held that Section 162.670 RSMo set a higher standard for Missouri special educators than the IDEA. The court held that Sections 162.670 and 162.675 required a student's capabilities be "maximized." Section 162.670 provided the following:

Section 162.670. In order to fully implement section 1(a) of article IX, constitution of Missouri, 1945, providing for the establishment and maintenance of free public schools for gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law, it is hereby declared the policy of the state of Missouri to provide or to require public schools to provide to all handicapped and severely handicapped children within the ages prescribed herein, as an integral part of Missouri's system of gratuitous education, special educational services sufficient to meet the needs and maximize the capabilities of handicapped and severely handicapped children. The need of such children for early recognition, diagnosis and intensive educational services leading to more successful participation in home, employment and community life is recognized. The timely implementation of this policy is declared to be an integral part of the policy of this state.

Following **Lagares**, the General Assembly amended the statute by removing the "maximization" language. The current version, effective August 28, 2002, states the following:

Section 162.670. In order to fully implement section 1(a) of article IX, constitution of Missouri, 1945, providing for the establishment and maintenance of free public schools for gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law, it is hereby declared the policy of the State of Missouri to provide or to require public schools to provide to all handicapped and severely handicapped children within the ages prescribed herein, as an integral part of Missouri's system of gratuitous education, a free appropriate education consistent with the provisions set forth in state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq. and any amendments thereto. The need of such children for early recognition, diagnosis and intensive educational services leading to more successful participation in home, employment and

community life is recognized. The timely implementation of this policy is declared to be an integral part of the policy of this state.

7. Respondents urge the panel to find the reasoning in *Lagares* to be “suspect, at best.” See *Gill v. Columbia 93 School District*, 217 F.3d 1027 (8th Cir. 2000).
8. As the due process review was filed in January 2001, well before the effective date of the amendment to Section 162.670 RSMo, the panel is generally required to apply the previous statute. *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 34[3-5] (Mo.banc 1982). And while *Lagares* was rendered subsequent to the due process request, it nonetheless instructs the panel as to the interpretation of the previous version of Section 162.670.
9. The panel acknowledges Respondents’ arguments regarding the difficulty in reconciling a fairly robust amount of law since *Rowley*, much of it in the federal courts, with *Lagares*. In another case, the panel might have been required to wrestle with application of the proper standard.
10. In the present case, however, the issue of the competing *Rowley* and *Lagares* standards is not in direct controversy. Rather, Petitioners simply claim that FAPE requires the child be placed in residential care. In their proposed conclusions of law, the *Lagares* “maximization” standard was not raised. Rather, Petitioners advanced the well-known *Rowley* progeny. The thrust of Petitioners’ argument is that under *any* standard, their child cannot receive FAPE in any of Respondents’ non-residential placements. This position may result from the child’s severe limitations, as a detailed assessment of how high or low a standard the educational program achieved simply lacks any workable value for either the parents or the educators. Put another way, utilizing the descriptive explanation from *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455, 459-60 (6th Cir. 1993), cited above, considering all of the evidence available, because of the child’s severe limitations, the panel simply cannot determine whether the child is riding in a Chevrolet or a Cadillac. Although not necessary to properly resolve this case, that question appears to hold little meaning for this child at this point in his educational program.
11. Petitioners claimed residential placement was required under the authority of *Independent School District No. 284 v. A.C.*, 258 F.3d 769 (8th Cir. 2001). As the court noted, “Despite the statutory preference for mainstream placements, the IDEA recognizes that some disabled students need full-time care in order to receive educational benefit.” The court explained that residential placement must be provided at the school’s cost “if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement.” *Id.* at 774.
12. The panel agrees with Petitioners that the child’s “medical/emotional problems” are not separable from the learning process. As the court in *A.C.* stated:

If the problem prevents a disabled child from receiving educational benefit, then it should not matter that the problem is not cognitive in nature or that it causes the child even more trouble outside the classroom than within it. What should control our decision is not whether the problem itself is “educational” or “non-educational,” but whether it needs to be addressed in order for the child to learn.

Id. at 777.

13. The panel agrees with Petitioners' argument that the child's IEP team has been concerned with the child's behavioral problems for many years. *Petitioners' Proposed Findings of Fact and Conclusions of Law, p.17*. The IEP team has moved the child from his home school of Carmen Trails into the Litzinger school, and the program has generally become more intensive.
14. As conceded by Petitioners, the facts of *A.C.* are quite different from those here. It is not necessary to contrast the child's behavior here with different behaviors from the 15-year-old girl in *A.C.*
15. The differences in *A.C.* and this case continue through an examination of the evidence supporting residential placement in *A.C.* In that case, the court noted that when viewed as an educational question, the issue as to whether the child can "reasonably be expected to make academic progress outside of a residential program" must be answered by "a consensus in the negative." The court noted that, "Of all the educators whose views of the matter appear in the record, the only one that does not recommend a residential placement is the school district that is being asked to pay for it." In *A.C.*, the child's treating psychologist, her Independent Education Evaluator, and her previous school district's psychologist all testified that residential placement was necessary for educational benefit. *Id.* at 777.
16. In the present case, however, no independent expert confirmed that the child required residential placement to receive a free and appropriate public education. The fact that the child's mother is a forensic psychiatrist is tempered by her honest testimony that "I am observing as a mom." [Tr. 20]
17. Nor did the independent assessment from the Judevine Center for Autism confirm that residential placement is necessarily indicated. [R-35] Notably, the recommendations from that assessment appear to be largely incorporated into the child's IEP. [R-35 at pp.310-12]
18. The panel agrees with Petitioners' conclusion that the environment between school and home is different:

In order to deal with [the child's] behavior problems during the school day, Respondent implemented a program that provided him with his own adult attending to him through out the school day. This one person gave [the child] all the attention he craved. As the year went on, this adult attendant trained [the child] that, if he used less violent means, he could get whatever adult attention he wanted. He was, in fact, being conditioned as any thirty month old child could be conditioned to elicit the desired response in the classroom, less aggressive behavior. Therefore, whenever [the child] wanted something, the adult was right there to give it to him, and all he had to do was act appropriately, which in this case meant less aggressively toward the adult. However, once [the child] was removed from this closely monitored, conditioned-response situation, he would regress to more violent behaviors to get his way. *At home it was impossible to duplicate the school environment.* [emphasis added] His mother had obligations not only to [the child] but to his sister and father as well. She could not possibly be with her son every minute of every day, and neither could [his father]. *Petitioners' Proposed Findings of Fact and Conclusions of Law, p.18-19.*

19. The panel disagrees however, with Petitioners' conclusion that Respondents' plan "elicited the appropriate behaviors in the self-contained classroom at school, but escalated [the child's] negative behaviors anywhere else." *Id.* Rather, Respondent's current IEP, including the placement at Litzinger, provide FAPE to the child. The IDEA requires that if residential placement is necessary to provide educational benefit, the school must bear the cost. The IDEA does not require the school pay for residential placement to harmonize the child's home life with his educational benefit at school.
20. As the court in ***Gonzalez v. Puerto Rico Dept. of Education***, 254 F.3d, 350, 352, 155 Ed. Law Rep. 20 stated: "Although a child may have severe behavior problems at home which make it difficult for his parents to control, the educational agency is not necessarily responsible to remedy this problem." The court in ***Gonzales*** did note that "where all agree that the student's activities need to be highly structured both during and after school in order for him to receive an appropriate education, clear lines can rarely be drawn between the student's educational needs and his social problems at home. Thus, typically an IEP in cases where the student's disability is this serious (and requires such a degree of structure) must address such problems in some fashion, even if they do not warrant residential placement." *Id.*
21. Except for the residential placement, Petitioners do not appear to challenge the specific details of the child's IEP. They have had all available opportunities to participate in the process. "It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard." ***Rowley***, *supra*, 102 S.Ct. at 3050. Additionally, both the child's principle classroom teacher at Litzinger, Lynn Shoudel, and the documents [R-31] confirm continued communication efforts by Respondents, including issues of transition from home to school and back.
22. The panel concludes that while small, the child has received appropriate educational benefit under his current IEP and placement at Litzinger school. The child's gains are certainly modest, but the panel believes this is due to his severe limitations, and not because of an inappropriate special education program.
23. **Decision:** It is, therefore, the unanimous decision of the panel that Petitioners' request for residential placement at this time be, and hereby is, respectfully denied.

* * *

So ordered January 31, 2003. Dan Pingelton, Chairperson; Jean M.W. Adams, Panel Member; Nicholas Thiele, Panel Member.

Jean M.W. Adams, Panel Member

Nicholas Thiele, Panel Member

Dan Pingelton, Chairperson

Recommendation from Panel Member Jean Adams

The Missouri State Plan for Special Education 2001 envisions that the school district will assist parents with counseling and training. Accordingly, I recommend that Respondent SSD “assist[] [the] parents in understanding the special needs of their child; provid[e] [the] parents with information about child development; and help[] [the] parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP.” *Missouri State Plan for Special Education 2001, Regulations for Implementing Part B of IDEA, Section I.3 (“Related Services” § G)*

Notice of Right to Appeal

The law provides that any party aggrieved by this decision may appeal to a court of proper jurisdiction. An aggrieved party may file an appeal in state court by utilizing a “Petition for Judicial Review,” pursuant to Chapter 536 of the Revised Statutes of Missouri. That petition must be filed in a court of proper venue (the county wherein the aggrieved party resides, or Cole County) within 30 days after mailing or delivery of the decision. (This decision was mailed to the parties on January 31, 2003.) An aggrieved party may also file an appeal in federal court by filing a complaint in a district court of the United States, without regard to the amount in controversy.